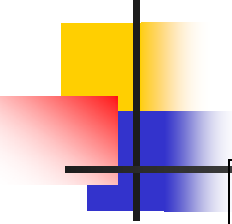


# *Solutions for Closing Impaired Transactions*



**Jack Smith- Vice President**

**ECBM**



# History of Closing Impaired Transactions

- **EnCap Golf - \$1 Billion Landfill to Multi Use Re-development**
- **McClellan AFB BRAC – 16.5 MM feet of space, Morgan Stanley**
- **Alameda NAS BRAC - \$1 Billion Development, Morgan Stanley**
- **Industrial Land Reclaiming- NJ landfill closing**
- **Handy Harman Site- Montvale, NJ**
- **Budget Rent A Car Group –Large airport parking location**
- **CRV-SC Partners- 1425 acre former industrial site new housing development.**
- **Insurance Consultant to Kushner on Perth Amboy Project ( on going)**



## What Solutions?

---

- Deal Structuring
  - Legal/Business
  - Real Estate
  - Risk Management
  - Technical
  - Fixed Price Indemnity
  - **NO BIAS**



# Key Issues to Make “Brownfields” Work

---

- Optimize Asset/Liability Balance – Seller Motivation
- Risk Transfer, Prudent Remedy, Thoughtful Development – Buyer Motivation
- Set Realistic Real Estate Valuations - Developers Economics
- Liability Does Not Kill The Deal, Real Estate Economics Does
- Insurance Market Will Treat Brownfield Solution Provider Better Than Seller, Broker, Environmental Firm
  - Coverage, Term, Premium, Attachment Point, Claims
- Seller Must Send Message to Internal Staff - Resistance Kills Deals
- Sell to Buyer with \$ - No Financing Contingencies
- Sell to Buyer Who Will Not Exacerbate Liability (Tort)
- Sell With A Broad Indemnity From Buyer
- Risk Transfer - Will Not Get Perpetuity and Without \$ Limit
- Governmental Releases of Liability Are Limited!!!
- Transaction Execution Costs are Typically 3% (Large) - 10% (Small) of Total \$



## Case Study

---

50 acre industrial manufacturing facility in major metro area. The real estate is valuable for adaptive re-use due to its location near downtown and the new rail system, but not for several years. There is substantial environmental information available , but no costs have been provided. The site has not achieved regulatory closure. There is not an approved work plan for the VCP. Known contamination is TPH, arsenic and lead in the soil, TCE in the ground water and asbestos. Adjacent properties are industrial and low income housing. Acquisition price in excess of \$20,000,000 with a 20 year indemnity to Seller.



## Preliminary Due Diligence

---

1. **Legal/Business** - Execute Confidentiality Agreement and Letter of Intent.
2. **Technical** - Discuss with Seller what environmental reports, regulatory correspondence and legal documents are available.
3. **Technical** - Review documents and provide a report as to the nature and extent of the environmental issues at the site and the **estimated** remedial activities/cost for current development plan for the site.
4. **Risk Management** - Estimated PLL and CCC insurance premiums, deductibles and self insured retentions.
5. **\$10,000**
6. **Typical Pre-Due Diligence is \$1,000 - \$20,000.**



# Due Diligence

---

1. **Technical** - Develop a RAP from the current environmental info.
2. **Technical and Legal/Business** - Coordinate/negotiate with regulators and Seller on RAP.
3. **Technical** - Develop cost for RAP/development.
  1. \$5,000,000 for Soil
  2. \$5,000,000 for Groundwater, Monitoring, O&M
  3. \$6,000,000 for Asbestos
  4. \$8,000,000 for Demo
4. **Risk Management** - Estimate PLL and CCC insurance premiums, deductibles and self insured retentions.
5. **\$150,000**
6. **Typical Due Diligence is \$10,000 - \$250,000.**



## Structuring/Closing

---

1. **Risk Management** - Insurance submittal for PLL and CCC.
2. **Risk Management** - Negotiate with insurers on SIR, premium, coverage.
3. **Risk Management/Legal/Business** - Negotiate with Seller on coverage.
4. **Risk Management** - Manuscript endorsement language to satisfy Seller.
5. **Risk Management/Legal/Business** - Assist in negotiating deal, writing indemnity in PSA, mesh with insurance.
6. **Technical/Risk Management** - Fix remedy cost, mitigate other risk.
  1. Liability Policy, \$1,900,000 (\$20MM, 20 year)
  2. Cost Cap Policy, \$800,000 (\$25MM attachment, \$20MM limit)
7. **Risk Management** - Placement fees.
  1. Market is 15% for an application submittal, no reporting.
  2. Market is \$250/hour plus at least 20% full service.
  3. 25% plus fees at \$200/hour.
8. **\$50,000**
9. **Typical Closing is \$10,000 - \$50,000.**





## Post Closing

---

1. **Technical** – Get approval from regulators for RAP.
2. **Technical** - Implement remedy. Sub contract for remediation.
3. **Technical** - Oversee, manage remediation.
4. **Technical** - Regulatory reporting.
5. **Risk Management** - Required Reporting for CCC. Costs Included in Placement Fee.
6. **Technical** - Coordinate remedy with development.
7. **Technical/Legal/Business** - Achieve NFA.
8. **Risk Management** - Claim notification/management.
9. \$1 million
10. **Typical Post Closing is \$50,000 - \$2,000,000.**



# Risk Management Structure

---

**Known On-Site  
Issues (\$7MM)**

**Known Off-Site  
Issues (\$3MM)**



# Risk Management Structure

---

## Fixed Price Remediation Contract

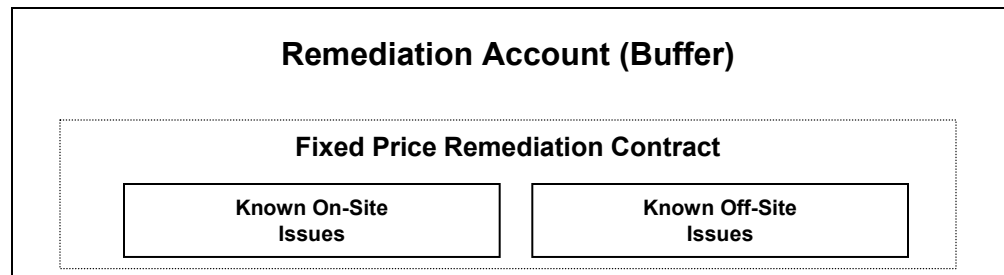
Known On-Site  
Issues

Known Off-Site  
Issues



# Risk Management Structure

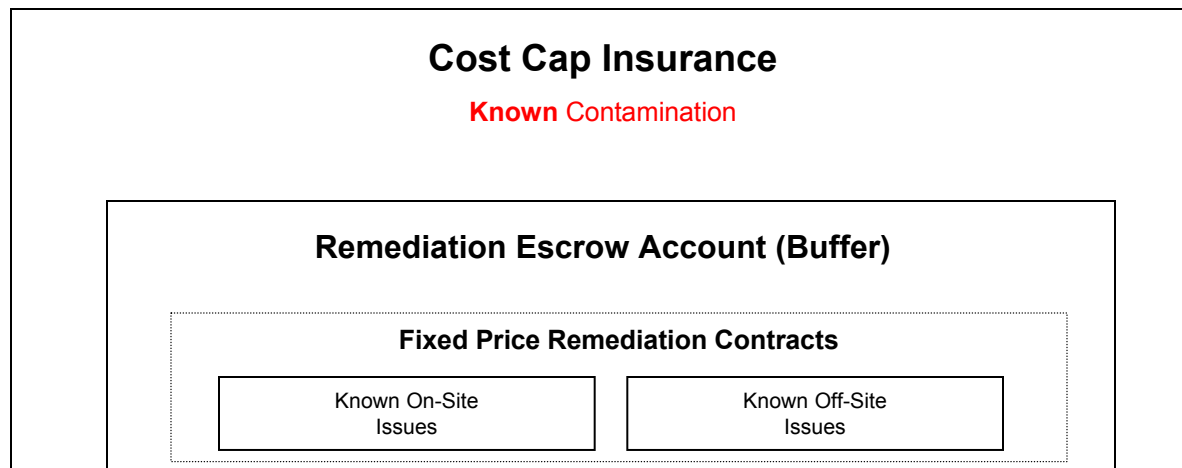
---





# Risk Management Structure

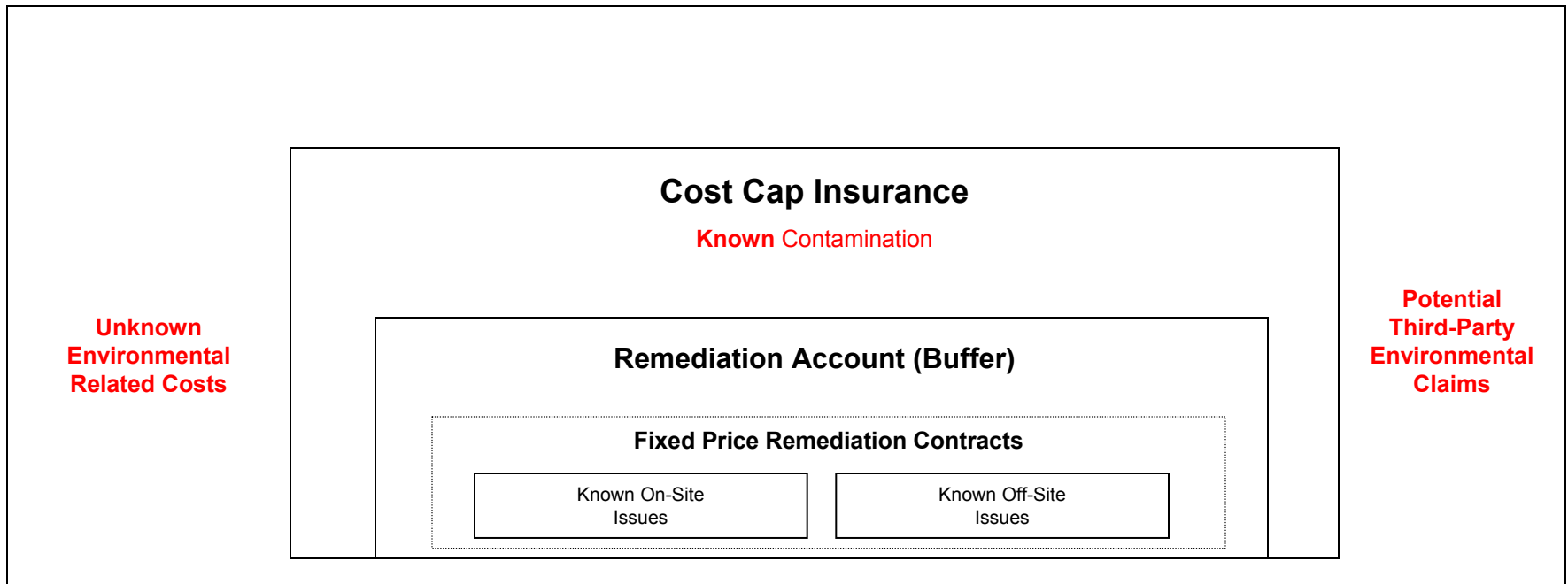
---





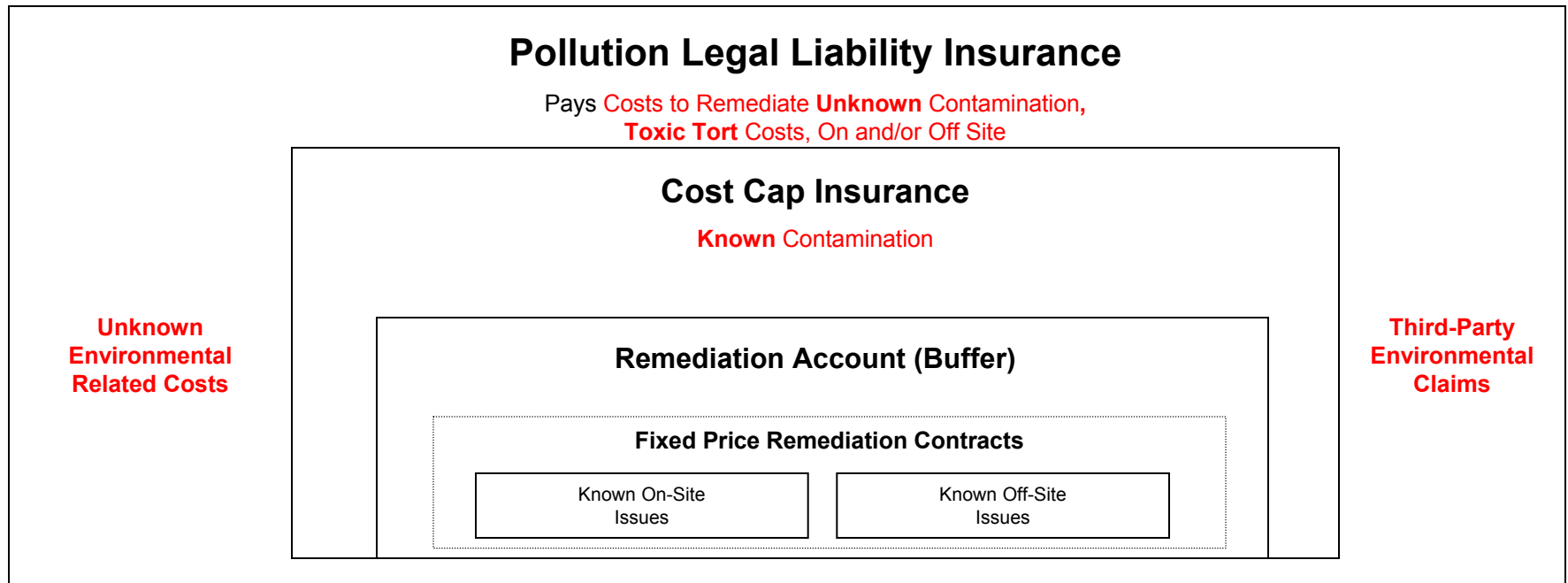
# Risk Management Structure

---





# Risk Management Structure





# Risk Management Structure

## Escrow or Limited Liability Company \$/Insurance

For Seller's Protection

### Legal Liability Insurance

Pays Costs to Remediate **Unknown** Contamination,  
**Toxic Tort** Costs, On and/or Off Site

### Cost Cap Insurance

**Known** Contamination

### Remediation Account (Buffer)

#### Fixed Price Remediation Contracts

Known On-Site  
Issues

Known Off-Site  
Issues

**Unknown  
Environmental  
Related Costs**

**Third-Party  
Environmental  
Claims**





## What's It Take To Get Deals Done?

---

- Creativity Throughout the Deal
- Patience, Deals Evolve
- Knowledge
- Relationships
- Realistic Expectations
- Credibility